MOTION FILED

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No. 96-111

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

CENTRAL CARTAGE CO.,

Petitioner,

v.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND and HOWARD McDOUGALL, Trustee, and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND and HOWARD MCDOUGALL, Trustee,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The National Association for Dispute Resolution, Inc. ("NADR") respectfully moves, pursuant to Rule 37 of the Rules of this Court, for leave to file the annexed brief *amicus curiae* in support of the petition for a writ of certiorari. The consent of counsel for the Petitioner has been obtained. Consent of counsel for the Respondents was sought but not obtained as counsel was unavailable at press time.

recently became aware of the Seventh Circuit's decision refusing jurisdiction to review denials of motions to compel arbitration. In the event that a Writ for Certiorari is issued by this Court, NADR intends to seek leave to file an amicus brief in support of granting appellate jurisdiction to review denials of motions for arbitration. NADR is involved as the arbitration body in many arbitration proceedings and can bring the perspective of the disinterested decision maker to this Court's deliberations.

The NADR is justly concerned that the policy considerations and benefits of arbitration will be lost when a party who is entitled to arbitration is denied that right by a federal district court and then is subsequently forced to go through an entire course of litigation before a federal appellate court will review the district court's denial of arbitration. Such is the result now in the Seventh Circuit and other circuits though better reasoned decisions allowing review at the interlocutory stage have emanated from certain other circuit courts of appeals.

Wherefore, NADR respectfully moves this Court to grant NADR leave to file the annexed brief *amicus curiae*.

Respectfully submitted,

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Seventh Circuit erred in not following precedents of the Fourth and Eighth Circuits and *dicta* of the Ninth Circuit and instead followed precedent from the Eleventh Circuit refusing jurisdiction under 28 U.S.C. § 1292(a)(1) to review an interlocutory order of a district court which denied Central Cartage's motion to compel arbitration.

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BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The National Association for Dispute Resolution, Inc. ("NADR") submits this brief as *amicus curiae* in support of the petition for a writ of certiorari and urges that this Court review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in Central States, Southeast and Southwest Areas Pension Fund v. Central Cartage Co., 84 F.3d 988 (7th Cir. 1996).

PRELIMINARY STATEMENT

Arbitration has become an important alternative to traditional litigation for a multitude of reasons. Speed of resolution, finality of decisions from appeals and consequent savings in attorneys fees are chief among those reasons. These benefits are effectively repudiated when a denial of arbitration rights cannot be reviewed until the conclusion of all court proceedings.

INTEREST OF *AMICUS CURIAE*

NADR is involved as the arbitration body in many arbitration proceedings and can bring the perspective of the disinterested decision maker to this Court's deliberations. NADR is a national mediation service which is peculiarly interested in the issue raised in the Petition. The organization recently became aware of the Seventh Circuit's decision refusing jurisdiction to review denials of motions to compel arbitration. In the event that a Writ for Certiorari is issued by this Court, NADR intends to seek leave to file an amicus brief in support of granting appellate jurisdiction to review denials of motions for arbitration.

THE PROCEEDING BELOW

On May 3, 1995, the United States District Court for the Northern District of Illinois denied Petitioner's motion to compel arbitration on the basis that Petitioner had waived its right to its alternative dispute resolution mechanism.

Petitioner filed its Notice of Appeal on June 13, 1996 contending that appellate jurisdiction existed in the United States Court of Appeals for the Seventh Circuit under 28 U.S.C. §1292(a)(1) (as the orders served as an injunction against arbitration) and under 9 U.S.C. § 16 (as a denial of arbitration under the Federal Arbitration Act).

The Seventh Circuit entered its decision dismissing Petitioner's appeal for lack of appellate jurisdiction in Central States, Southeast and Southwest Areas Pension Fund v. Central Cartage Co., 84 F.3d 988 (7th Cir. 1996).

ARGUMENT

The Seventh Circuit's decision furthers the split among the various Circuit Courts of Appeal on appellate jurisdiction over interlocutory orders relating to arbitration pursuant to 28 U.S.C. §1292(a)(1) which has occurred since this Court issued its opinion in Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271 (1988). Currently, the geographic location of the litigants determines whether their Court of Appeals will review orders denying them their right to arbitrate.

Appellate review of will not burden the courts. Many litigant already have the right to appellate review under 28 U.S.C. §1292(a)(1) because the Court of Appeals for their Circuit does not follow the recent holding of the Seventh Circuit. Further, appellate review may alleviate the burden upon the district courts of going forward with a piece of litigation when the district court has denied arbitration and the court of appeals finds such denial to have been erroneous.

CONCLUSION

The NADR would ask this Court to issue its Writ of Certiorari to review the Seventh Circuit's decision and to guarantee litigants outside the Federal Arbitration Act that their right to appellate protection of arbitration rights does not depend on their geographic location within the Federal Court of Appeals system.

The NADR respectfully requests that this Court grant Petitioner's petition for a writ of certiorari.

Respectfully submitted,

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